

Waste Management and Radiation Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
July 14, 2016
1:30 p.m.

Board Members Present: Brett Mickelson (Chair), Dennis Riding (Vice Chair), Richard Codell, Danielle Endres, Mark Franc, Steve McIff, Shawn Milne, Vern Rogers and Shane Whitney

Board Members Absent: Jeremy Hawk and Alan Matheson

Staff Members Present: Brent Everett, Gary Astin, Ralph Bohn, Arlene Lovato, Rusty Lundberg, Allan Moore, Deborah Ng, Rick Page, Jerry Rogers, Elisa Smith, Don Verbica, Otis Willoughby, David Wheeler and Raymond Wixom

Others Present: Linda Ebert, Kellison Platero, Ulrich Rassner, Dan Shrum, Ashley Soltysiak, Jeff Tucker and Joe Ozimek

I. Call to Order.

Brett Mickelson (Chair) welcomed all in attendance and called the meeting to order at 1:30 p.m. Jeremy Hawk and Alan Matheson were excused from the meeting.

II. Approval of the meeting minutes for the June 9, 2016 Board Meeting (**Board Action Item**).

It was moved by Shawn Milne and seconded by Richard Codell and UNANIMOUSLY CARRIED to approve the June 9, 2016 Board Meeting minutes.

III. Underground Storage Tanks Update.

Brent Everett, Director of the Division of Environmental Response and Remediation informed the Board that the cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of May 2016 was \$17,142,184.00. The preliminary estimate for the cash balance of the PST Trust Fund for the end of June 2016 is \$17,376,517.00. There were no questions or comments on the PST Trust Fund balance.

IV. Administrative Rules

- A. Approve change in proposed Solid Waste Rule R315-319, Management of Coal Combustion Residuals (CCR) in Landfills and Surface Impoundments and to set an effective date of September 1, 2016 (Board Action Item).

Allan Moore, Solid Waste Section Manager, and Ralph Bohn, Planning and Technical Support Manager, Division of Waste Management and Radiation Control, reviewed the request for the Board to approve changes in proposed Solid Waste Rule R315-319, Management of Coal Combustion Residuals (CCR) in Landfills and Surface Impoundments and to set an effective date of September 1, 2016. R315-319 was published in the April 15, 2016 State Bulletin for a 30-day public comment period. The comment period ended on May 16, 2016. Three commenters submitted comments. Based on comments received, some changes will be made to the proposed rule. The comments and the response to comments were provided in the July 14, 2016 Board packet.

The Federal rules for the management of CCRs became effective October 19, 2015. These rules outline the minimum criteria for disposal of CCRs from electric utilities in landfills and surface impoundments. In order for the State of Utah to establish a permitting program for these CCR management units, state rules are needed. R315-319 establishes solid waste permit criteria for the management of CCRs in Utah. These rules require that landfills disposing of CCRs and surface impoundments storing CCRs have a solid waste permit that meets the requirements of R315-319. R315-319 follows the same management criteria in the federal rules (40 CFR 257).

Richard Codell requested clarification on the wording regarding “vegetation” and whether these impoundments are wet or dry. Mr. Moore explained that the impoundments in the State of Utah are wet impoundments and the language regarding height was deleted from the rules, so there is no longer a height limitation.

Mr. Bohn explained that the removal of this particular language was due to a settlement between environmental groups and EPA. In the settlement, the court vacated that portion of the rule. Mr. Bohn anticipates that EPA will make additional language changes/clarification on this matter. The concern is that if vegetation grows too large, the roots would get into the impoundments and damage them.

Danielle Endres noted that the EPA settlement may result in some additional changes to the Federal statute, which would require changes for the State of Utah. Mr. Bohn agreed that further changes to the rule may be necessary.

Ms. Endres asked how groundwater contamination would be addressed. Mr. Bohn explained that the solid waste rules required those responsible for groundwater contamination to clean it up.

It was moved by Vern Rogers and seconded by Shawn Milne and UNANIMOUSLY CARRIED to approve changes in proposed Solid Waste Rule R315-319, Management of Coal Combustion Residuals (CCRs) in Landfills and Surface Impoundments and to set an effective date of September 1, 2016.

B. Final adoption of proposed changes to Solid Waste Rule R315-310, Permit Requirements for Solid Waste Facilities and to set an effective date of July 15, 2016 (Board Action Item).

Allan Moore and Ralph Bohn reviewed the request for the Board to approve, for final adoption, the proposed changes to Solid Waste Rule R315-310, Permit Requirements for Solid Waste Facilities and to set an effective date of July 15, 2016. This agenda item is related to the previous matter.

R315-310 adds Coal Combustion Residual Landfills and Coal Combustion Residual Surface Impoundments to the list of landfills requiring permits. The rule also adds language allowing continued operation of landfills that are in operation at the time a permit is required, provided an application is submitted within six months of the effective date of the rule.

The proposed changes to Solid Waste Rule R315-310 were published in the April 15, 2016 Utah State Bulletin for a 30-day public comment period. The 30-day public comment period ended on May 16, 2016. No comments were received.

It was moved by Dennis Riding and seconded by Danielle Endres and UNANIMOUSLY CARRIED to approve for final adoption the proposed changes to Solid Waste Rule R315-310, Permit Requirements for Solid Waste Facilities and to set an effective date of July 15, 2016.

- C. Approval to proceed with formal rulemaking and 30-day public comment period for repeal of Rule R313-27, “Medical Use Advisory Committee” (Board Action Item).

Ralph Bohn reviewed the request for the Board to proceed with formal rulemaking and 30-day public comment period for repeal of Rule R313-27, “Medical Use Advisory Committee.”

R313-27 was adopted by the Radiation Control Board in its final meeting in June 2015. R313-27 requires the Board to appoint a medical use advisory committee to review any rule or other policy that affects the medical use of radiation and to make a recommendation to the Board on the proposed rule. R313-27 establishes the makeup of the committee and requires the committee to report to the Board prior to any Board action on a rule related to the medical use of radiation.

Mr. Bohn explained that the Division received a memorandum from Craig Anderson, Assistant Attorney General, stating that the Radiation Control Board did not have the authority to promulgate R313-27. (A copy of the memorandum was provided in the July 14, 2016 Board packet.)

Comments regarding the proposed repeal were received from the former Radiation Control Board Chairman, Peter Jenkins and Dr. Ulrich Rassner. Mr. Bohn recommended that the comments provided by Mr. Jenkins and Dr. Rassner be considered by the Board as a public comment and considered during the public comment process. Mr. Bohn also recommended that the Board proceed with publishing the proposed rule for a 30-day public comment period. After the 30-day public comment period, all comments would be reviewed and a recommendation would be brought back to the Board.

Mr. Bohn further explained that the Division seeks input and comment from groups and individuals that may be affected by a proposed rule. This process is referred to as “scoping.” Comments from this process are evaluated and changes are made as necessary and appropriate. Mr. Bohn does not feel that a review committee is needed because the Division already gathers the necessary input on proposed rules through its scoping process.

Danielle Endres asked if the Underground Storage Tank Advisory Task Force mentioned by Amanda Smith still existed or if it had been dissolved with the creation of the new Board.

Brent Everett explained that the UST Advisory Task Force still exists but is not connected to the Board. This task force is an ad hoc committee that is made up of stakeholders, the regulated community and individuals who work in the industry. The UST Advisory Task Force meets quarterly to discuss programmatic issues and Division staff informally work with the Task Force prior to bringing any proposed rules to the Board for consideration.

Mr. Bohn clarified that the UST Advisory Task Force is not created by rule. Raymond Wixom, Attorney General’s Office, further explained that the scoping done by the Division on proposed rules and the UST Advisory Task Force’s work on proposed rules creates the same results.

Richard Codell noted that the power to create an advisory committee is vested with the Executive Director of the Utah Department of Environmental Quality and suggested that the Board consider other options to address this issue. Dr. Codell asked if the Division can do anything with public comment on rules that cannot be changed, because they are required by federal law. Mr. Bohn explained that, although the public can comment, the Division does not have the flexibility to make any changes.

Rusty Lundberg clarified that many of the NRC rules designate certain compatibility levels with a given rule. Sometimes there are areas with more flexibility while others have limited flexibility. For those

instances with limited flexibility, the Division has little opportunity to change what has already been promulgated by the NRC. However, that does not mean that experts cannot look at the rule. Input from individuals affected by proposed rules is welcomed.

Vern Roger agreed with Mr. Lundberg's comments and made a motion to delay this matter for 30 days to see if the Executive Director would consider forming a committee under his authority.

Dr. Ulrich Rassner, Nerve Radiologist at the University of Utah, expressed support for an advisory committee in some form to provide input on proposed rules regarding the medical uses of radiation by dentists, diagnostic radiologists and radiation oncologists.

Dennis Riding noted his history with the UST Advisory Task Force and has found it be very useful, even though it has no real rulemaking authority. Mr. Riding agreed with Mr. Rogers' proposal.

Steve McIff expressed his support for a medical use advisory committee to provide input on these issues.

Shawn Milne asked Mr. Wixom if this committee would be an ad hoc committee, regardless of who has the authority to create it. Mr. Wixom stated the committee will be whatever the Executive Director chooses to make it. Mr. Milne clarified that an ad hoc committee would only give advice to the Executive Director or this Board. Mr. Wixom agreed with this statement.

Mr. Milne agreed with Mr. Rogers' motion, as he likes the idea of an ad hoc committee for the reasons stated. He would prefer to let the proposed rule move forward because he does not see any damage in initiating a thirty-day comment period as a parallel track, but supported waiting for answers from the Executive Director and seconded Mr. Rogers' motion.

Marc Franc asked if there would be consequences for not repealing the rule at this time. Mr. Wixom stated that the consequences are only theoretical. Theoretically, someone could challenge the rule, although not likely.

It was motioned by Vern Rogers and seconded by Shawn Milne and UNANIMOUSLY CARRIED to delay this matter for 30 days to see if the Executive Director would consider forming a committee under his authority.

V. Hazardous Waste Section

A. Proposed Stipulation and Consent Order between the Board and Heckmann Woods Cross (Board Action Item)

Deborah Ng, Hazardous Waste Section Manager, reviewed the proposed Stipulation and Consent Order (SCO) to resolve the failure of Heckmann Woods Cross to fully implement the facility closure plan required by Heckmann's Used Oil Processing Permit (UOP-0068).

The SCO resolves Heckmann's failure to achieve final closure and includes a penalty of \$75,000. The Permit will be terminated after all terms of the SCO have been completed

The public comment period for this SCO commenced on May 19, 2016 and closed on June 17, 2016. No public comments were received. The Director recommends the Board approve this proposed SCO.

Shane Whitney asked if clean-up and closure has been completed at the facility. Ms. Ng stated partial closure has been completed. However, full implementation of the entire closure plan could not be achieved. Mr. Whitney asked if the property is under new ownership. Ms. Ng stated the property is currently under lease.

Marc Franc commented that one issue discussed at length in the previous meeting was that terminating the permit eliminates the owner's responsibility to maintain financial assurance. However, if, at some point, the need for cleanup arises, the State does not accept responsibility. Instead, that responsibility still remains with the property owner. Ms. Ng agreed with the statement.

It was moved by Dennis Riding and seconded by Steve McIff and UNANIMOUSLY CARRIED to approve the Proposed Stipulation and Consent Order between the Board and Heckmann Woods Cross.

VI. Other Business

- A. Report to Legislature on the evaluation of closure, post-closure and perpetual care for hazardous and radioactive waste treatment and disposal facilities (Information Item Only).

Deborah Ng and Don Verbica, Low Level Radioactive Waste Section Manager, discussed the draft report prepared for the Board by URS Corporation (AECOM) of its evaluation of the adequacy of financial assurance for closure, post-closure care and perpetual care and maintenance for commercial hazardous waste and radioactive waste treatment, storage and disposal facilities. The report was provided to the Board members on a thumb drive that was distributed during the meeting.

During the 2005 legislative general session, the Utah Legislature passed Senate Bill 24 which directed the Radiation Control Board and the Solid and Hazardous Waste Board to evaluate the adequacy of the funding for closure, post-closure and perpetual care for commercial hazardous waste and radioactive waste treatment, storage and disposal facilities. In addition, the Legislature directed an evaluation of the need for funding for catastrophic failure of a landfill cell, ground water corrective action or major maintenance of a landfill cell. This report is required every five years.

A contractor prepared the 2006 report and it was presented to the legislature by the Board chairs. The 2011 report was submitted but not considered by the Legislature.

The 2011 report was an update of the 2006 report. In similar fashion, the 2016 report is an update of the 2011 report and provides background and explanatory information and context to help the reader understand the issues, findings and recommendations. Some of the details of the report were discussed. Questions by Board members were addressed by Division staff. Board members were asked to read the report and provide any comments.

Rusty Lundberg reminded the Board that the statute requires this report be submitted to the Legislative Management Committee by October 1, 2016. Any comments will be discussed in the August Board meeting and a final report will be prepared for the Board's consideration in the September 8, 2016 meeting. An email will be sent to Board members to provide further instructions on how to submit their comments.

- B. Misc. Information Items - None to Report.

- C. Scheduling of next Board meeting.

The next Board meeting is scheduled for 1:30 p.m. on August 11, 2016 at the UDEQ, 195 North 1950 West, SLC. (The meeting was rescheduled to August 15, 2016 at 1:30 p.m.)

VII. Adjourn.

The meeting adjourned at 2:33 p.m.